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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RIVER CITY MEDIA, LLC, a Wyoming
limited liability company, MARK
FERRIS, an individual, MATT FERRIS,
an individual, and AMBER PAUL, an
individual,

Plaintiffs,

vs.

No. 2:17-cv-105-SAB

DEFENDANT CXO MEDIA, INC.'S
ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT

DEFENDANT CXO MEDIA, INC.'S ANSWER TO
FIRST AMENDED COMPLAINT
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1 KROMTECH ALLIANCE
2 CORPORATION, a German corporation,
3 CHRIS VICKERY, an individual, CXO
4 MEDIA, INC., a Massachusetts
5 corporation, INTERNATIONAL DATA
6 GROUP, INC., a Massachusetts
7 corporation, and STEVE RAGAN, an
individual, and DOES 1-50,

Defendants.

8 Defendant CXO Media, Inc. ("CXO") respectfully submits this Answer to
9 Plaintiffs' First Amended Complaint ("Complaint") (ECF No. 110) as follows:

10
11 **I.**

12 **RESPONSES TO PLAINTIFFS' ALLEGATIONS**

13 1-2. CXO is without sufficient information at this time to admit or deny the
14 allegations in paragraphs 1-2 of the Complaint and therefore denies the allegations
15 pursuant to Fed. R. Civ. P. 8(b)(5).
16

17 3. Denied.

18 4-5. CXO is without sufficient information at this time to admit or deny the
19 allegations in paragraphs 4-5 of the Complaint and therefore denies the allegations
20 pursuant to Fed. R. Civ. P. 8(b)(5).
21

22 6. Denied.
23

24 DEFENDANT CXO MEDIA, INC.'S ANSWER TO
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1 7. CXO denies that it engaged in any illegal actions causing any damage to
2 Plaintiffs' businesses, reputations, livelihoods, and physical or mental health. CXO is
3 without sufficient information at this time to admit or deny the remaining allegations in
4 paragraphs 7 of the Complaint and therefore denies the allegations pursuant to Fed. R.
5 Civ. P. 8(b)(5).
6

7 8. CXO is without sufficient information at this time to admit or deny the
8 allegations in paragraphs 8 of the Complaint and therefore denies the allegations pursuant
9 to Fed. R. Civ. P. 8(b)(5). CXO, however, denies any wrongdoing or that Plaintiffs are
10 entitled to any relief.
11

12 9. Admitted.

13 10. Admitted.

14 11. Admitted.

15 12. Admitted.

16 13. Admitted.

17 14. Admitted.

18 15. CXO admits that the Court has personal jurisdiction over Ragan but
19 otherwise denies the allegations in paragraph 15.
20

21 16. CXO admits that the Court has personal jurisdiction over CXO, that Ragan
22 is an employee of CXO, and that CXO had the right to control Ragan but otherwise
23

1 denies the allegations in paragraph 16.

2 17. CXO is without sufficient information at this time to admit or deny the
3 allegations in paragraphs 17 of the Complaint and therefore denies the allegations
4 pursuant to Fed. R. Civ. P. 8(b)(5).
5

6 18. CXO admits that venue is proper but denies any acts of illegal computer
7 access.
8

9 19-24. CXO is without sufficient information at this time to admit or deny
10 the allegations in paragraphs 19-24 of the Complaint and therefore denies the allegations
11 pursuant to Fed. R. Civ. P. 8(b)(5).
12

13 25. Admitted.

14 26. CXO is without sufficient information at this time to admit or deny the
15 allegations in paragraph 26 of the Complaint and therefore denies the allegations pursuant
16 to Fed. R. Civ. P. 8(b)(5).
17

18 27. CXO admits that Ragan is an employee of CXO but denies the remaining
19 allegations of paragraph 27.

20 28-39. CXO is without sufficient information at this time to admit or deny
21 the allegations in paragraphs 28-39 of the Complaint and therefore denies the allegations
22 pursuant to Fed. R. Civ. P. 8(b)(5).
23

24 40. Admitted.

1 41. Admitted except that the actual quote was: "This is the story of how River
2 City Media (RCM), Alvin Slocombe, and Matt Ferris, accidentally exposed their entire
3 operation to the public after failing to properly configure their Rsync backups."

4
5 42. CXO admits that the article included the quote "This is the story of how
6 River City Media (RCM), Alvin Slocombe, and Matt Ferris, accidentally exposed their
7 entire operation to the public after failing to properly configure their Rsync backups."
8 CXO otherwise denies the allegations in paragraph 42.

9
10 43. CXO is without sufficient information at this time to admit or deny the
11 allegation in paragraph 43 of the Complaint regarding what "River City's records show"
12 and therefore denies the allegation pursuant to Fed. R. Civ. P. 8(b)(5). The remaining
13 allegations in paragraph 43 are denied.

14
15 44-50. CXO is without sufficient information at this time to admit or deny
16 the allegations in paragraphs 44-50 of the Complaint and therefore denies the allegations
17 pursuant to Fed. R. Civ. P. 8(b)(5).

18
19 51. CXO denies that it or Ragan ever publicly announced an unlawful computer
20 hacking by Defendants. CXO is without sufficient information at this time to admit or
21 deny the remaining allegations in paragraph 51 of the Complaint and therefore denies the
22 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

23
24 52. CXO is without sufficient information at this time to admit or deny the

1 allegations in paragraph 52 of the Complaint and therefore denies the allegations pursuant
2 to Fed. R. Civ. P. 8(b)(5).

3
4 53. CXO denies that it or Ragan “purposefully attack[ed] and compromise[ed]
5 River City’s Zabbix server” and “effectively hamstrung River City’s ability to detect and
6 stop their cyberattack.” CXO is without sufficient information at this time to admit or
7 deny the remaining allegations in paragraph 53 of the Complaint and therefore denies the
8 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

9
10 54. Denied as to CXO and Ragan. CXO is without sufficient information at this
11 time to admit or deny the allegations in paragraph 54 of the Complaint as they relate to
12 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

13
14 55-58. CXO is without sufficient information at this time to admit or deny
15 the allegations in paragraphs 55-58 of the Complaint and therefore denies the allegations
16 pursuant to Fed. R. Civ. P. 8(b)(5).

17
18 59. Denied as to CXO and Ragan. CXO is without sufficient information at this
19 time to admit or deny the allegations in paragraph 59 of the Complaint as they relate to
20 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

21
22 60. Denied as to CXO and Ragan. CXO is without sufficient information at this
23 time to admit or deny the allegations in paragraph 60 of the Complaint as they relate to
24 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

1 61. CXO denies that it or Ragan misappropriated or converted any funds and
2 admits that they would have had no authority to do so.

3
4 62. Denied.

5 63. Denied as to CXO and Ragan. CXO is without sufficient information at this
6 time to admit or deny the allegations in paragraph 63 of the Complaint as they relate to
7 other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

8
9 64. CXO is without sufficient information at this time to admit or deny the
10 allegations in paragraph 64 of the Complaint and therefore denies the allegations pursuant
11 to Fed. R. Civ. P. 8(b)(5).

12 65-66. Denied.

13
14 67. CXO admits that Ragan authored the article titled "Spammers expose their
15 entire operation through bad backups" located at
16 <https://www.csoononline.com/article/3176433/security/spammers-expose-their-entire->
17 [operation-through-bad-backups.html](https://www.csoononline.com/article/3176433/security/spammers-expose-their-entire-operation-through-bad-backups.html) dated March 6, 2017 ("Ragan Article"). CXO
18 admits that there is an article titled "Spammergate: The Fall of an Empire" located at
19 <https://mackeeper.com/blog/post/339-spammergate-the-fall-of-an-empire> dated June 3,
20 2017 ("Vickery Article"). CXO denies the remaining allegations in paragraph 67.

21
22 68. CXO admits that the Vickery Article states that "RCM masquerades as a
23 legitimate marketing firm while, per their own documentation, being responsible for up to

1 a billion daily email sends.” CXO admits that the Vickery Article includes the words
2 “illegal hacking”. CXO denies the remaining allegations of paragraph 68.

3
4 69. CXO is without sufficient information at this time to admit or deny the
5 allegations in paragraph 69 of the Complaint and therefore denies the allegations pursuant
6 to Fed. R. Civ. P. 8(b)(5). CXO denies that it or Ragan wrongfully caused any harm to
7 RCM.

8
9 70. CXO denies that it or Ragan made any defamatory statements. CXO is
10 without sufficient information at this time to admit or deny the remaining allegations in
11 paragraph 70 of the Complaint and therefore denies the allegations pursuant to Fed. R.
12 Civ. P. 8(b)(5).

13
14 71. CXO is without sufficient information at this time to admit or deny the
15 allegations in paragraph 71 of the Complaint and therefore denies the allegations pursuant
16 to Fed. R. Civ. P. 8(b)(5).

17
18 72. CXO admits publishing the Ragan Article. CXO denies the remaining
19 allegations of paragraph 72.

20
21 73. CXO admits that the Vickery Article includes the quotes “RCM
22 masquerades as a legitimate marketing firm while, per their own documentation, being
23 responsible for up to a billion daily email sends” and “How can a group of about a dozen
24 people be responsible for one billion emails sent in one day? The answer is a lot of

1 automation, years of research, and fair bit of illegal hacking techniques". CXO denies
2 the remaining allegations of paragraph 73.

3
4 74. CXO admits that the Vickery Article includes the statement that "Purposely
5 throttling your own machinery to amass open connections on someone else's server is a
6 type of Slowloris attack [[https://en.wikipedia.org/wiki/Slowloris_\(computer_security\)](https://en.wikipedia.org/wiki/Slowloris_(computer_security))]." CXO denies the remaining allegations of paragraph 74.

8
9 75. CXO admits that the Ragan Article includes the following statements:

- 10 • (quoting Vickery): "Once we concluded that this was indeed related to a
11 criminal operation, it was decided that we should approach law enforcement and
12 the affected companies (like Microsoft and Yahoo) before making any attempts
13 at contacting the spammers directly."
14
15 • "In the RCM chat logs, McKeown is respected for his scripting work. His
16 efforts enabled RCM to exploit a number of providers in order to inbox offers."
17
18 • "'Nobody would knowingly give their email address to spammers, so they have
19 to be tricked into it. Usually, there is some kind of offer for a 'free gift' in
20 exchange for giving up an email address and personal information. The fine
21 print of these offers allows the company to share their address with their
22 'partners' which ends up also being their partner's partners, and their partner's
23 partner's partners, until every spammer on the planet has their address,'

1 explained Spamhaus' Mike Anderson. He goes on to explain such address lists
2 are the lifeblood of the industry, and they're constantly being analyzed through
3 tracking systems - examining which addresses are viewing spam ads, which
4 ones are clicking on them, and which ones are buying. 'Meanwhile, the original
5 contract for handing over the address is never fulfilled, since it turns out to be
6 impossible to redeem the 'free gift' or only with extreme difficulty. And of
7 course these addresses never go through a confirmation process, to ensure it's
8 the real owner of the address doing the signup.'"
9

10
11 CXO denies the remaining allegations of paragraph 75.

12 76. CXO admits that the Ragan Article included a link to the Vickery Article but
13 denies the remaining allegations of paragraph 76.
14

15 77. Denied that the statements above are false. CXO is without sufficient
16 information at this time to admit or deny the remaining allegations in paragraph 77 of the
17 Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).
18

19 78. Denied.

20 79-80. Admitted.

21 81-83. CXO is without sufficient information at this time to admit or deny
22 the allegations in paragraphs 81-83 of the Complaint and therefore denies the allegations
23 pursuant to Fed. R. Civ. P. 8(b)(5).
24

1 84. CXO hereby incorporates by reference the foregoing paragraphs as though
2 fully set forth herein.

3
4 85. CXO admits Vickery is not an employee of RCM but is without sufficient
5 information at this time to admit or deny the remaining allegations in paragraph 85 of the
6 Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

7 86-90. CXO is without sufficient information at this time to admit or deny
8 the allegations in paragraphs 86-90 of the Complaint and therefore denies the allegations
9 pursuant to Fed. R. Civ. P. 8(b)(5).
10

11 91. Denied as to CXO and Ragan. CXO is without sufficient information at this
12 time to admit or deny the allegations in paragraph 91 of the Complaint as they relate to
13 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
14 8(b)(5).
15

16 92. Denied as to any conduct by CXO or Ragan. CXO is without sufficient
17 information at this time to admit or deny the allegations in paragraph 92 of the Complaint
18 as they relate to Plaintiff RCM or the other Defendants and therefore denies the
19 allegations pursuant to Fed. R. Civ. P. 8(b)(5).
20

21 93. CXO hereby incorporates by reference the foregoing paragraphs as though
22 fully set forth herein.

23 94. CXO admits Vickery is not an employee of RCM but is without sufficient
24

1 information at this time to admit or deny the remaining allegations in paragraph 94 of the
2 Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

3 95-98. CXO is without sufficient information at this time to admit or deny
4 the allegations in paragraphs 95-98 of the Complaint and therefore denies the allegations
5 pursuant to Fed. R. Civ. P. 8(b)(5).
6

7 99. Denied as to CXO and Ragan. CXO is without sufficient information at this
8 time to admit or deny the allegations in paragraph 99 of the Complaint as they relate to
9 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
10 8(b)(5).
11

12 100. Denied as to any conduct by CXO or Ragan. CXO is without sufficient
13 information at this time to admit or deny the allegations in paragraph 100 of the
14 Complaint as they relate to Plaintiff RCM or the other Defendants and therefore denies
15 the allegations pursuant to Fed. R. Civ. P. 8(b)(5).
16

17 101. CXO admits that RCM seeks punitive and exemplary damages but denies
18 that RCM is entitled to recover them and denies the remaining allegations of paragraph
19 101.
20

21 102. CXO admits that RCM seeks attorney's fees but denies that RCM is entitled
22 to recover them.
23

24 103. CXO hereby incorporates by reference the foregoing paragraphs as though

1 fully set forth herein.

2 104. CXO admits Vickery is not an employee of RCM but is without sufficient
3 information at this time to admit or deny the remaining allegations in paragraph 104 of
4 the Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).
5

6 105-107. CXO is without sufficient information at this time to admit or deny
7 the allegations in paragraphs 105-107 of the Complaint and therefore denies the
8 allegations pursuant to Fed. R. Civ. P. 8(b)(5).
9

10 108. Denied as to CXO and Ragan. CXO is without sufficient information at this
11 time to admit or deny the allegations in paragraph 108 of the Complaint as they relate to
12 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
13 8(b)(5).
14

15 109. Denied as to CXO and Ragan. CXO is without sufficient information at this
16 time to admit or deny the allegations in paragraph 109 of the Complaint as they relate to
17 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
18 8(b)(5).
19

20 110. Denied as to CXO and Ragan. CXO is without sufficient information at this
21 time to admit or deny the allegations in paragraph 110 of the Complaint as they relate to
22 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
23 8(b)(5).
24

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1 111. Denied as to any conduct by CXO and Ragan. CXO is without sufficient
2 information at this time to admit or deny the allegations in paragraph 111 of the
3 Complaint as they relate to the other Defendants and therefore denies the allegations
4 pursuant to Fed. R. Civ. P. 8(b)(5).
5

6 112. CXO hereby incorporates by reference the foregoing paragraphs as though
7 fully set forth herein.
8

9 113. CXO admits Vickery is not an employee of RCM but is without sufficient
10 information at this time to admit or deny the remaining allegations in paragraph 113 of
11 the Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).
12

13 114-116. CXO is without sufficient information at this time to admit or deny
14 the allegations in paragraphs 114-116 of the Complaint and therefore denies the
15 allegations pursuant to Fed. R. Civ. P. 8(b)(5).
16

17 117. Denied as to CXO and Ragan. CXO is without sufficient information at this
18 time to admit or deny the allegations in paragraph 117 of the Complaint as they relate to
19 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
20 8(b)(5).
21

22 118. Denied as to any conduct by CXO and Ragan. CXO is without sufficient
23 information at this time to admit or deny the allegations in paragraph 118 of the
24 Complaint as they relate to Plaintiff RCM or the other Defendants and therefore denies

1 the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

2 119. CXO admits that RCM seeks punitive and exemplary damages but denies
3 that RCM is entitled to recover them and denies the remaining allegations of paragraph
4 119.
5

6 120. CXO hereby incorporates by reference the foregoing paragraphs as though
7 fully set forth herein.
8

9 121-122. CXO is without sufficient information at this time to admit or deny
10 the allegations in paragraphs 121-122 of the Complaint and therefore denies the
11 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

12 123. Denied as to CXO and Ragan. CXO is without sufficient information at this
13 time to admit or deny the allegations in paragraph 123 of the Complaint as they relate to
14 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
15 8(b)(5).
16

17 124. Denied as to CXO and Ragan. CXO is without sufficient information at this
18 time to admit or deny the allegations in paragraph 124 of the Complaint as they relate to
19 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
20 8(b)(5).
21

22 125. Denied.

23 126. Denied as to CXO and Ragan. CXO is without sufficient information at this
24

1 time to admit or deny the allegations in paragraph 126 of the Complaint as they relate to
2 Plaintiffs or the other Defendants and therefore denies the allegations pursuant to Fed. R.
3 Civ. P. 8(b)(5).
4

5 127. CXO hereby incorporates by reference the foregoing paragraphs as though
6 fully set forth herein.

7 128-129. CXO is without sufficient information at this time to admit or deny
8 the allegations in paragraphs 128-129 of the Complaint and therefore denies the
9 allegations pursuant to Fed. R. Civ. P. 8(b)(5).
10

11 130. Denied as to CXO and Ragan. CXO is without sufficient information at this
12 time to admit or deny the allegations in paragraph 130 of the Complaint as they relate to
13 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
14 8(b)(5).
15

16 131. Denied as to CXO and Ragan. CXO is without sufficient information at this
17 time to admit or deny the allegations in paragraph 131 of the Complaint as they relate to
18 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
19 8(b)(5).
20

21 132. Denied as to CXO and Ragan. CXO is without sufficient information at this
22 time to admit or deny the allegations in paragraph 132 of the Complaint as they relate to
23 Plaintiffs or the other Defendants and therefore denies the allegations pursuant to Fed. R.
24

1 Civ. P. 8(b)(5).

2 133. CXO hereby incorporates by reference the foregoing paragraphs as though
3 fully set forth herein.
4

5 134. CXO is without sufficient information at this time to admit or deny the
6 allegations in paragraph 134 of the Complaint and therefore denies the allegations
7 pursuant to Fed. R. Civ. P. 8(b)(5).
8

9 135. Denied as to CXO and Ragan. CXO is without sufficient information at this
10 time to admit or deny the allegations in paragraph 135 of the Complaint as they relate to
11 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
12 8(b)(5).
13

14 136. Denied as to CXO and Ragan. CXO is without sufficient information at this
15 time to admit or deny the allegations in paragraph 136 of the Complaint as they relate to
16 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
17 8(b)(5).
18

19 137. Denied as to CXO and Ragan. CXO is without sufficient information at this
20 time to admit or deny the allegations in paragraph 137 of the Complaint as they relate to
21 Plaintiffs or the other Defendants and therefore denies the allegations pursuant to Fed. R.
22 Civ. P. 8(b)(5).
23

24 138. CXO hereby incorporates by reference the foregoing paragraphs as though

1 fully set forth herein.

2 139-140. CXO is without sufficient information at this time to admit or deny
3 the allegations in paragraphs 139-140 of the Complaint and therefore denies the
4 allegations pursuant to Fed. R. Civ. P. 8(b)(5).
5

6 141. Denied as to CXO and Ragan. CXO is without sufficient information at this
7 time to admit or deny the allegations in paragraph 141 of the Complaint as they relate to
8 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
9 8(b)(5).
10

11 142. Denied as to CXO and Ragan. CXO is without sufficient information at this
12 time to admit or deny the allegations in paragraph 142 of the Complaint as they relate to
13 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
14 8(b)(5).
15

16 143. Denied as to any conversion by CXO or Ragan. CXO is without sufficient
17 information at this time to admit or deny the allegations in paragraph 143 of the
18 Complaint as they relate to the Plaintiffs or the other Defendants and therefore denies the
19 allegations pursuant to Fed. R. Civ. P. 8(b)(5).
20

21 144. CXO hereby incorporates by reference the foregoing paragraphs as though
22 fully set forth herein.

23 145. CXO admits Vickery is not an employee of RCM but is without sufficient
24

1 information at this time to admit or deny the remaining allegations in paragraph 145 of
2 the Complaint and therefore denies the allegations pursuant to Fed. R. Civ. P. 8(b)(5).

3 146-148. CXO is without sufficient information at this time to admit or deny
4 the allegations in paragraphs 146-148 of the Complaint and therefore denies the
5 allegations pursuant to Fed. R. Civ. P. 8(b)(5).
6

7 149. Denied as to CXO and Ragan. CXO is without sufficient information at this
8 time to admit or deny the allegations in paragraph 149 of the Complaint as they relate to
9 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
10 8(b)(5).
11

12 150. Denied as to CXO and Ragan. CXO is without sufficient information at this
13 time to admit or deny the allegations in paragraph 150 of the Complaint as they relate to
14 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
15 8(b)(5).
16

17 151. Denied as to CXO and Ragan. CXO is without sufficient information at this
18 time to admit or deny the allegations in paragraph 151 of the Complaint as they relate to
19 the other Defendants and therefore denies the allegations pursuant to Fed. R. Civ. P.
20 8(b)(5).
21

22 152-153. CXO is without sufficient information at this time to admit or deny
23 the allegations in paragraphs 152-153 of the Complaint and therefore denies the
24

1 allegations pursuant to Fed. R. Civ. P. 8(b)(5).

2 154. CXO hereby incorporates by reference the foregoing paragraphs as though
3 fully set forth herein.
4

5 155-160. Denied.
6

7 **Jury Demand**

8 CXO demands a jury for all claims and admits that Plaintiffs demand a jury as
9 well.
10

11 **Plaintiffs' Request for Relief**

12 CXO denies that Plaintiffs are entitled to any relief in the section of the Complaint
13 titled "XVI. REQUEST FOR RELIEF".
14

15 **Affirmative Defenses**

16 Without assuming the burden of proof where it otherwise rests with Plaintiffs,
17 CXO asserts the following defenses:
18

- 19 1. Plaintiffs fail to state a claim upon which relief can be granted.
20 2. Plaintiff RCM is precluded from asserting its state-law claims because it is
21 not registered to do business with the Washington Secretary of State. See RCW
22 § 23.95.505.
23

- 24 3. Plaintiffs failed to mitigate their damages. On information and belief,

1 Plaintiffs could have used reasonable efforts to mitigate their damages, including without
2 limitation by not engaging in the conduct that is the subject of the Ragan Article and
3 Vickery Article.
4

5 4. Plaintiffs' claims against CXO and Ragan are barred due to the privilege of
6 fair comment on matters of public concern. The statements in the Ragan Article
7 constituted a fair comment on a matter of public concern, and the statements were not
8 made maliciously or based on false statements of fact.
9

10 5. In the event that the defendant bears the burden of proving the truth of the
11 statements at issue, Plaintiffs' claims against CXO and Ragan are barred because the
12 statements in the Ragan Article were true and, at a minimum, substantially true and the
13 gist, or "sting," of the Ragan Article was true.
14

15 6. In the unlikely event of liability on the part of CXO, punitive and exemplary
16 damages are unavailable to Plaintiffs under Washington law.

17 7. The statements in the Ragan Article are protected under the First
18 Amendment to the U.S. Constitution and Article I Section 5 of the Washington
19 Constitution.
20
21
22
23
24

Prayer

For the foregoing reasons, Defendant CXO Media, Inc. respectfully requests that the Court dismiss Plaintiffs' suit against it, and grant it such other relief to which it may be justly entitled.

Respectfully submitted this 20th day of July, 2018.

s/Kevin J. Curtis, WSBA No. 12085
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Attorneys for Defendants CXO Media, Inc. and
Steve Ragan

1 I hereby certify that on July 20, 2018, I electronically filed the foregoing with the
2 Clerk of the Court using the CM/ECF System which will send notification of such filing
3 to the following:
4

5 Jason E. Bernstein - jake@newmanlaw.com
6 Leeor Neta (*admitted pro hac vice*) - leeor@newmanlaw.com

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